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IN THE UNITED STATES BANKRUPTCY COURT

IN AND FOR THE DISTRICT OF ARIZONA

In re:
MARCI GOLDSTEIN,
Debtors.

Chapter 13 Proceeding
Case No. 2:12-bk-22669-GBN

MARCIE GOLDSTEIN,
Plaintiffs,
vs.
JP MORGAN CHASE BANK, N.A.,
Defendant

Adversary No. 2:13-ap-01001-GBN

COMPLAINT

Plaintiff, Marcie Goldstein, by and through undersigned counsel, Kyle A. Kinney, hereby states for her complaint as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; 11 U.S.C. § 506(a), 11 U.S.C. § 1123(b)(5) and Rule 7001 et seq. Rules of Bankruptcy Procedure. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (b)(2)(B), and (b)(2)(K).

2. Plaintiff resides in Maricopa County, Arizona, and is the Debtor in the above captioned Chapter 13 Proceeding.

3. Plaintiff entered into loan agreement on or about September 22, 2006 with JP Morgan Chase Bank, N.A for a second deed of trust.

1 4. Defendant, JP Morgan Chase Bank, N.A., upon information and belief, is
2 licensed to do, write, make, and service residential mortgage loans in the State of Arizona.

3 5. Plaintiffs filed a voluntary Chapter 13 petition on or about October 14, 2012 in
4 the District of Arizona, Case No. 2:12-bk-22669-GBN.

5 6. Plaintiff, at the time of filing her case, was the owner of certain real property
6 located at 7401 W. Arrowhead Clubhouse Dr., No 2052, Glendale, AZ 85308 (the "Property")
7 with a legal description as follows:

8 LOT 2052, THE FAIRWAYS AT ARROWHEAD CONDOMINIUMS,
9 ACCORDING TO THE DECLARATION OF THE CONDOMINIUM
10 RECORDED AT RECORDER'S NO. 97-97069 AND FIRST AMENDED
DECLARATION RECORDED IN 97-388050, OF OFFICIAL RECORDS AND
PLAT RECORDED IN BOOK 431 OF MAPS, PAGE 9, RECORDS OF
11 MARICOPA COUNTY, ARIZONA.

12 7. The Plaintiff believes this property was worth \$118,000 at the time of filing the
13 Chapter 13 case, based upon a sale of another condominium with the same square footage in the
14 same complex that closed on June 26, 2012 as well as the Maricopa County Tax Estimate from
15 both 2012 and 2013 (attached and incorporated by reference as "*Exhibit A*").

16 8. The Property is subject to a lien secured by a first deed of trust in favor of JP
17 Morgan Chase Bank, N.A. The payoff to JP Morgan Chase Bank, N.A. for the first deed of
18 trust, as of the date of filing, was \$122,250.

19 9. The Property is also subject to a lien secured by a second deed of trust in favor of
20 JP Morgan Chase Bank, N.A. The payoff on the second deed of trust, as of the date of filing,
21 was \$78,574.00.

22 10. Plaintiff asserts that, after applying the first principal balance secured by the first
23 deed of trust, there is no equity remaining to which the second mortgage lien can attach:

24 Appraised Value of the Property \$118,000.00

25 Less: First Deed of Trust \$122,250.00

26 Available Equity for Deed of Trust (\$4,250.00)

11. Plaintiff asserts that, pursuant to 11 U.S.C. §§ 506(a) (1) and 506(d), Defendant's claim is totally unsecured and the lien (deed of trust) upon the Plaintiff's real property is void.

WHEREFORE, Plaintiff prays that this Court find in favor of Plaintiff and Order the following:

- a. That there is insufficient equity for Defendant's second deed of trust to attach and that said deed of trust is totally unsecured and void.
- b. That this Court order the Defendant to cancel and release the second deed of trust on the residential real estate of the Debtors pursuant to 11 U.S.C. §506(d), immediately upon the entry of the discharge order and deliver a copy of the release to the attorney for the Debtor within twenty (20) days from the date of the discharge at no charge or fee for the release and delivery.
- c. That the Order of this Court shall be recorded and the same shall have the effect of voiding the lien on the public records.
- d. That the Plaintiff recover any relief that this Court deems justified and appropriate.

SIGNED this date: 6th day of September, 2012.

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/s/ Kyle A. Kinney #027189

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